

PROB 35

ORDER TERMINATING PROBATION PRIOR TO EXPIRATION DATE

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)
vs.) Docket Number: 2:05CR00169-01
Sean Matthew DARCY)

On January 10, 2005, the above-named was placed on Probation for a period of 5 years. He has complied with the rules and regulations of supervision. It is accordingly recommended that he be discharged from supervision.

Respectfully submitted,

TERENCE E. SHERBONDY
Senior United States Probation Officer

Dated: November 19, 2007
Roseville, California
tes:cd

REVIEWED BY:

RICHARD A. ERTOLA
Supervising United States Probation Officer

Re: Sean Matthew DARCY
Docket Number: 2:05CR00169-01
ORDER TERMINATING PROBATION
PRIOR TO EXPIRATION DATE

ORDER OF COURT

It is ordered that the probationer be discharged from Probation, and that the proceedings in the case be terminated.

Dated: November 26, 2007



GARLAND E. BURRELL, JR.
United States District Judge

tes:cd
Attachment: Recommendation
cc: United States Attorney's Office
FLU Unit, AUSA's Office
Fiscal Clerk, Clerk's Office

**RECOMMENDATION TERMINATING
PROBATION PRIOR TO EXPIRATION DATE**

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA)	
)	
)	Docket Number: 2:05CR00169-01
vs.)	
)	
Sean Matthew DARCY)	
)	

LEGAL HISTORY:

On January 10, 2005, the above-named was placed on Probation for a period of 5 years. Special conditions included the probationer: Shall provide a signed release authorizing credit report inquiries, federal and state income tax returns or a signed release authorizing their disclosure, and an accurate financial statement, with supporting documentation as to all assets, income and expenses; Shall not apply for any loan or open any line of credit without prior approval of the probation officer; Shall maintain one personal checking account, which all monetary gains shall be deposited into, and which shall be used for payment of all personal expenses. Records of all other bank accounts shall be disclosed to the probation officer upon request; Shall not transfer, sell, give away or otherwise convey any asset with a fair market value in excess of \$500 without approval of the probation officer until all financial obligations imposed by the Court have been satisfied in full.

SUMMARY OF COMPLIANCE:

Mr. Darcy has complied with all conditions and special conditions of Probation, and has not been involved in any further criminal activities. It is the opinion of the probation officer that he has derived maximum benefit from supervision and is not in need of continued supervision.

**Re: Sean Matthew DARCY
Docket Number: 2:05CR00169-01
RECOMMENDATION TERMINATING
PROBATION PRIOR TO EXPIRATION DATE**

RECOMMENDATION:

It is, therefore, respectfully recommended that Probation in this case be terminated early.

Respectfully submitted,

/s/ Terence E. Sherbondy

**TERENCE E. SHERBONDY
Senior United States Probation Officer**

Dated: November 19, 2007
Roseville, California
tes:cd

**REVIEWED BY: /s/ Richard A. Ertola
RICHARD A. ERTOLA
Supervising United States Probation Officer**

CC: AUSA (Pursuant to Rule 32, notice of proposed relief to the probationer is being provided. If no objection is received from you within 14 days, the probation officer's Recommendation and Prob 35 - Order Terminating Probation Prior to Expiration Date, will be submitted to the Court for approval.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MEMORANDUM

Honorable Garland E. Burrell, Jr.
Chief United States District Judge
Sacramento, California

RE: **Sean Matthew Darcy**
Docket Number: **2:05CR00169-01**
EARLY TERMINATION OF PROBATION
Hearing Date: 11/30/2007

Your Honor:

On November 9, 2007, defense counsel for Darcy filed a Motion for Early Termination of Probation. The results of an investigation into the request for early termination are set forth below accompanied by a recommendation in support of the motion.

On January 10, 2005, Darcy was sentenced in the United States District Court for the Central District of California, to a five-year probation term, after being convicted for a violation of 18 USC 371 - Conspiracy to Defraud the United States. According to the presentence report, Darcy was a longtime friend of Tyler Davis Bingham's and maintained contact with Bingham over the years. Bingham was described as a Commissioner of the Aryan Brotherhood (AB) while Darcy was characterized as an AB Associate, used primarily as a message passer. Between 1995 and 2000, Darcy became involved in transmitting messages between Bingham and other members of the Aryan Brotherhood (AB).

More specifically, in August 1995, Bingham and other AB members arranged to have drug proceeds sent to Darcy. Darcy advised he transferred the money without knowing it was the proceeds of narcotics trafficking. The government reported it had no reason to dispute Darcy's contention. On August 30, 1995, Darcy mailed money orders in the amount of \$105 to eleven AB members, including Bingham, all of whom were incarcerated at Florence, Colorado.

On July 6, 1997, Darcy spoke on the telephone with Bingham who was incarcerated in Florence, Colorado. During that telephone conversation, Darcy discussed the whereabouts of an organized crime leader.

On September 24, 1998, Darcy mailed a letter to Bingham, who was incarcerated in the Administrative Maximum Facility in Florence, Colorado. In that letter, Darcy, using obscured language, told Bingham that some other members of the conspiracy anticipated being indicted on very serious charges.

On August 6, 2000, Darcy spoke on the telephone with Michael McElhiney, who was incarcerated at the United States Penitentiary at Marion, Illinois. Using coded or obscured language, McElhiney told

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Darcy that McElhiney and David Michael Sahakian were in control of the activities of white inmates at the Marion, Illinois, penitentiary. On August 29, 2000, Darcy spoke on the telephone with Bingham who was incarcerated in Florence, Colorado. Using coded language, Darcy conveyed to Bingham what he was told by McElhiney.

Darcy recently provided the probation officer with a letter, and numerous attachments, detailing his various business activities and his explanation regarding the underlying offense. A copy of Darcy's letter is enclosed for the Court's review.

An Assistant United States Attorney (AUSA) for the Central District of California, the original prosecuting agency, was interviewed. The AUSA believes Darcy is unlikely to commit further crimes; however, he expressed concern that Darcy will resume contact with AB members. Although the AUSA explained the Attorney General has placed communication restrictions on Bingham, not every AB member has such communication restrictions.

Since the instant offense, Darcy has had no further contact with Bureau of Prisons inmates using any of his reported telephone numbers, physical or email addresses. Moreover, Darcy has suffered no new arrests while under probation supervision.

Concerning travel to Canada, a representative of the San Francisco-based Canadian Consulate's Office and a probation officer from the Western District of New York, Buffalo Office, were contacted. These parties reported Darcy will need to obtain permission, in the form of a Minister's Permit or Waiver, to travel to Canada. It is understood the process is time consuming and the Canadian authorities have been known to prohibit travel until the individual is 5 years beyond the date supervision has expired. However, his supervision status would not necessarily preclude application for a permit or waiver.

A review of Darcy's file revealed he has paid his \$10,000 fine; \$100 penalty assessment; and completed 300 hours of community service. He has submitted timely Monthly Supervision Reports and maintained stable residence and employment. Darcy has submitted clean urine samples and he has traveled without incident.

Darcy appears to meet each of the criteria for early termination as set forth under Monograph 109 - The Supervision of Federal Offenders. His original offense conduct has apparently not been repeated while he has been under supervision. Darcy argues his business activities are hindered by his

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restricted travel to Canada, due to his supervision status. However, I understand Darcy may apply for a Waiver or Minister's Permit, irrespective of his supervision status.

Darcy presents a strong argument for early termination based on his response to supervision. In accordance with probation office criteria, an offender with a 5-year probation term must complete three years of the five-year grant, for early termination consideration. Pursuant to this criteria, Darcy is eligible for early termination on January 9, 2008, approximately 40 days from the date of the hearing.

Based on the results of the above investigation, and the relatively short time frame from the hearing date and Darcy's early termination eligibility date, it is respectfully recommended the Court grant the Motion for Early Termination and vacate the hearing scheduled for November 30, 2007. If the Court agrees, attached is an Order Terminating Probation Prior to Expiration Date, for Your Honor's signature. I can be reached at 786-6147 if the Court or the parties have any questions concerning this report and recommendation.

Respectfully submitted,

/s/ Terence E. Sherbondy

TERENCE E. SHERBONDY
Senior United States Probation Officer

Dated: November 19, 2007

Roseville, California

TES:cd

REVIEWED BY: /s/ Richard A. Ertola
RICHARD A. ERTOLA
Supervising United States Probation Officer

Attachment(s) Offender's correspondence
Order Terminating Probation Prior to Expiration Date

cc: Kenneth J. Melikian, Assistant United States Attorney
William E. Bonham, Defense Counsel